S.B. Civil Writ Petition No.5906/06
State of Raj. & Ors. Vs. Shri Shyam Singh & Anr.

22.08.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri B.K. Sharma, Addl. GA for petitioners.
Shri S.K. Jain for respondent.

Heard learned counsel for the parties.

The State of Rajasthan has filed this writ petition against the order dated 18.4.2006 by which its application for taking the written statement of record was rejected by the trial court. The trial court in the order has refused to accept the application filed under Section 148 CPC on the premise that earlier on 19.9.2005, application to the same effect was rejected and the

defendant petitioner did not challenge that order and therefore the same became final and was not opened to review and reconsideration.

The learned counsel for the petitioner argued that the suit filed by the respondent for recovery of a sum of Rs.3,07,120/- and after the written statement filed by the State Government is not allowed to be taken on record, they would be gravely prejudiced and if eventually the decree against them is passed, the burden ultimately comes on the State exchequer. It was argued that decision on merits by enabling the defendants to place their written statement on record and also its evidence could not in any way prejudice the plaintiff.

Shri S.K. Jain, the learned counsel for the respondent has opposed the writ petition and argued that the order passed by the learned trial court is valid and legal and does not cal for any interference.

In the facts of the case, although, technically the trial court was right in refusing to entertain the application because the earlier order passed to the same effect was not challenged by the plaintiff but now in the matter before this Court, taking into consideration totality of circumstances and facts that it is always appropriate to render a decision on the merits of the case rather than on lapses or fault on the part of government officials which ultimately create pecuniary liability for

the Government, I therefore deem it appropriate to allow the written statements to be taken on record.

In the result, the writ petition is allowed. The order passed by the trial court dated 18.4.2006 is set aside and the written statement filed by the defendant is allowed to be taken on record subject to payment of Rs.500/- as cost to the petitioner which shall be paid before the trial court.

(Mohammad Rafiq),J.

Rs/-